

**REMARKS**

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1, 7 and 8 stand objected to noting a number of informalities. Original claims 1-11 have been canceled without prejudice and new claims 12-20 are submitted for examination. The objections noted by the Examiner have been taken into account in drafting the new claims.

The drawings stand objected to noting a failure to describe reference 4A in paragraph 38 of the specification. This reference has been removed and therefore the objection to the drawings is moot.

Claims 1 and 5-11 stand rejected under 35 USC §102(b) as being anticipated by Seidel. This rejection is believed moot in light of the fact that claim 12 incorporates subject matter from original claims 2 and 3. In addition, the independent system claim 16 and independent claim radio communication device claim 17 also incorporate the subject matter from claims 2 and 3.

The Examiner rejects claims 2 and 3 based on the combination of Seidel, Schefczik, and Chen. This rejection is respectfully traversed.

With respect to Seidel, the Examiner reads the step (b) of assigning to each of the PDUs a respective transmit power level value and a respective code rate value on Seidel's Figure 5 which shows the base station sending PDUs. The Examiner contends that each "PDU contains a transport format control indicator (TFCI) that includes code rating information" and refers to paragraph 40 of Seidel. The Examiner also alleges that the TFCI and TPC field "is part of the PDU header." Applicant respectfully disagrees.

Although each PDU header may include a sequence number (SN), Seidel does not teach that each PDU includes its own TFCI and its own TPC field. Figure 1 shows the frame structure of a low rate dedicated channel (DCH) which includes its own TFCI and TPC in addition to a

data field which includes multiple PDUs. Thus, all of the PDUs in a particular frame in Seidel employ the same TFCI and same TFC. Thus the Examiner's assumption is not supported in the teachings of Seidel. Indeed, the paragraph 40 relied on by the Examiner talks about the frame and slot structure of the dedicated shared channel (DSCH) which is a channel that contains multiple PDUs, rather than an individual PDU itself which is what the claim is directed to.

Another deficiency in the rejection is that there is no teaching in any of the three references of forming a new set of PDUs comprising PDUs that were not correctly received during the first transmission along with new PDUs from the incoming data stream. As the Examiner admits, this feature is not found in Schefczik. Although Chen teaches a packet retransmission scheme in which a packet received in error can be retransmitted "concurrently with the new packet in the current frame or at a subsequent frame," see column lines 48-50, Chen teaches that the erroneous is retransmitted at a lower energy-per-bit level concurrently in the same frame with the new packet. See Chen's abstract. Chen explains that this lower energy or lower power use for retransmission of the erroneous packet is important to achieve Chen's major objective of maximizing capacity. *Id.* Thus, Chen does not teach the claimed features of assigning retransmitted packets with lower sequence numbers the highest power level values as compared to the new packets which have higher sequence numbers and therefore lower transmission powers. In fact, Chen teaches doing the exact opposite.

There are multiple features recited in the independent claims that are missing from the combination of Seidel, Schefczik, and Chen. Moreover, with Chen's teaching away from what is claimed in the present application and from the what the Examiner proposes in the combination of Seidel, Schefczik, and Chen, it is clear that there is no reasonable basis for making the

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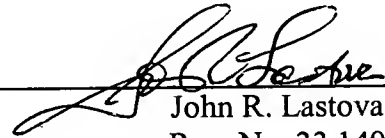
combination of these references as proposed by the Examiner since Chen explicitly teaches away from that combination.

Accordingly, the prior art rejection should be withdrawn. The application is in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



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